IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 629 of 2007

Judgement reserved on:

Date of decision: 7.9.2007.

State of H.P. **…..Petitioner- Appellant.**

Vs.

Rajender Kumar **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the petitioner : Mr. M.L.Chauhan, Addl. Advocate General.

For the Respondents :

Kuldip Singh, Judge (Oral).

This an application for grant of leave to file an appeal against judgement of acquittal, dated 6.6.2007, passed by the learned Sub Divisional Judicial Magistrate, Delhousie, in Criminal Case No. 36-II of 1999.

2. The facts in brief are that on 16.7.1998 at about 12 noon accused Rajender Kumar was driving bus bearing registration No. HP-39-3595 and due to his rash and negligent driving, he hit army vehicle bearing registration No. 92D-90144Y. The matter was reported to the police and an FIR was registered. After completion of the investigation, challan was presented in the court and notice of

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Whether the reporters of the local papers may be allowed to see the Judgment?

accusation, under Sections 279 IPC and 184 of the Motor Vehicles Act was put to the accused. The learned Sub Divisional Judicial Magistrate acquitted the accused on 6.6.2007, as noticed above. The State has filed the application for leave to file an appeal.

3. Heard. PW Shashi Kant on 16.7.1998, was going to Yol Camp from Dalhousie workshop with vehicle bearing registration No. 92D-90144Y. The accused around 12.00 O'Clock while driving vehicle bearing registration No. HP-39-3595 came from Tunuhatti side and hit his vehicle. There was sufficient place on the other side of the road. None has sustained injuries. PW 3 Kishan Singh examined the accidental vehicles and submitted his reports. PW 4 Yashpal Singh has stated that on 16.7.1998, he was with PW 1 Shashi Kant in vehicle bearing registration No. 92D-90144Y. A bus bearing registration No. HP-39-3595 came from Pathankot side and hit their vehicle. He has stated that accident took place due to the negligence of the accused.

4. PW 1 and PW 4 have not stated that accused was driving vehicle bearing registration No. HP-39-3595 on the wrong side. The accused was driving the bus and was going uphill while the army vehicle was going downhill. The learned Magistrate has held that there was a curve on the road and the vehicle of the accused was not at a high speed and has held that the accident did not take place due to the rash and negligent driving of the accused. Rajender Singh, a witness present on the spot was not examined. The case of the prosecution has not been supported by the independent witness. The learned Magistrate after appreciation of the evidence has taken a

possible view and acquitted the accused. Hence, leave to file an appeal is refused.

September 7, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**